(37)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Nos. 587, 588, 589.

EDWIN J. CREEL
Petitioner

vs.

ROBERT T. CREEL,
Respondent

MOTION FOR DELAY IN CONSIDERATION OF PETITION FOR REHEARING

EDWIN J. CREEL,
in proper person.

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VS.

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To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the Petitioner, Edwin J. Creel, and respectfully prays:

That consideration of Petitioner's pending motion—for rehearing—on denial of Petition for Writs of Certiorari—be delayed; in order that the Court might give simultaneous consideration, to the said motion for Rehearing; and to a complaint and petition; for institution of disbarment proceedings—against Counsel for Respondent—and which said complaint will be filed herein by Petitioner, within the next week or ten days.

Grounds.

As grounds for the motion, Petitioner respectfully shows to the Court:

I.

As indicated, Petitioner is preparing to file in this Court, within the next week or ten days; a complaint and Petition for institution of disbarment proceedings, against Counsel for Respondent—Messrs. Leon Tobriner and Selig C. Brez —and under authority of Rule 2, paragraph 5, of the Rules of this Court.

It is Petitioner's opinion that the statement of fact contained in that Petition for institution of disbarment proceedings, and in its accompanying exhibits—which include copies of two petitions to be filed by Petitioner, with Congressional committees, in regard to this case—should be in the hands of the Court; and should be given careful consideration by the Court before final judgment is passed on Petitioner's pending motion for rehearing in this case.

The Petition to the Judiciary Committee of the House.

Accompanying that petition for disbarment,—and as a statement of fact in support thereof—will be a copy of a complaint and petition to the Judiciary Committee of the House o fRepresentatives; for an investigation of the criminal abuse of this receivership during the past 13 years; and for impeachment proceedings to be instituted against the judges guilty of knowingly aiding in the said conspiracy.

More particularly, Petitioner will ask for impeachment of those guilty of the long continued, and now supposedly successful attempts, to sell the partnership business to Respondent at a fraudulent and fictitious judicial sale; and where the said sale had been so arranged, that no one other than Resopndent could become the actual purchaser of the business.

The Petition for Passage of a Uniform Partnership Act.

Accompanying that said petition for disbarment also—and as a further statement of fact in support thereof—will be a copy of a petition to both houses of Congress, for passage of a Uniform Partnership act for the District of Columbia; and so that Petitioner will have specific statutory authority to back Petitioner's demand, for the setting aside of the said fraudulent sale to Respondnet; if—and when—that sale is carried through, and as is now obviously planned.

Similarity of the Conspiracy Charged in this Case, to that Charged Against Former Federal Judge Johnson.

The Judiciary Committee of the House of Representatives has recently filed its report on the criminal misconduct of former Federal Judge Johnson, who is now under indictment in Pennsylvania on criminal conspiracy charges, and for acceptance of bribes, etc. And in that report, the Judiciary Committee charges Judge Johnson, among other crimes with the following:

> "With participation in conspiracies to dispose of receivership assets to pre-arranged buyers, for whom favorable conditions were created by rulings from the bench."

In Petitioner's said complaint to Congress, however, it will be shown that in the present receivership, it was not merely a matter of arranging "favorable conditions" for the purchase by Respondent. Instead, three completely different attempts were made, before a scheme could be found, by which the business could be actually sold to Respondent. And it was then sold to Respondent—or at least the sale was confirmed to Respondent—under a scheme which is a gross violation of the statutory provisions, which govern the judicial sale of any interest in land.

The Three Attempts to Sell the Business to Respondent.

At the first of the said attempts, the business was sold at public auction, under an order for sale, which was so framed that supposedly no one other than Respondent would purchase the business.

That is, outsiders were debarred from purchasing by reason of the fact that the business was appraised at $220,000 and the order for sale required payment of "all cash"; except for a $19,200 mortgage on the real estate. Also, Respondent, by reason of his employment as manager under the receiver, for 13 years past, has alienated and secured control of the vital agencies of the partnership. Thus if any outsider had bought the business; plaintiff could take away the agencies; and so leave but a mere wreck of the business that had been sold to the said purchaser.

It was obvious that no outsider would risk $200,000 in cash on any such trap; and no outsider made any bid at the public sales of the property.

This left but Respondent and Petitioner, as possible purchasers. Respondent therefore forced through, in the order for sale—and over Petitioner's protest, the illegal provision, that either partner could bid at the auction, and become the purchaser.

It was further provided, in the said order of sale; that if either partner became the purchaser, he should be entitled—on the final settlement and payment of the purchase price—to use as a credit on such payment, such amount as the Receiver might fairly estimate to be the said partner's distributive interest, in and to the partnership assets.

And since Petitioner would be unable to pay the full price in cash; this last provision meant that in case Petitioner did become the purchaser; that the sale to Petitioner could be defeated, by means of a fraudulent estimate by the Receiver, as to the amount to be allowed Petitioner as a credit on the purchase price. And by this means, it was further provided that only Respondent, could actually become the purchaser at the said judicial sale.

However, in order to insure that Petitioner could act as a dummy bidder; Respondent forced through a motion giving each partner a $50,000 allowance; and in so doing Respondent committed willful perjury, as set out on p. 21, of Appendix I, of the pending motion for rehearing.

Defeat of Petitioner's Purchase of the Property.

It was clearly supposed that Petitioner, would not actually dare to purchase the property, because of Respondent's control of the agencies.

Petitioner, however, was forced to buy in the property, at the public auction, in order to protect Petitioner's interests therein. The sale was then confirmed to Petitioner, with the consent of Respondent; and was thus completely legalized, as regards the bar otherwise against the purchase of trust property by a fiduciary.

That sale to Petitioner was then defeated however, by illegal and fraudulent demands made by the Receiver, as to the amount payable as balance due on the property by Petitioner. That is, the receiver demanded that Petitioner should pay over again for $2,248 of assets already purchased by Petitioner at the original sale. Also the receiver demanded that Petitioner pay him $60,000 to cover alleged receivership costs, but which costs had never been assessed against Petitioner, by the Court; and $17,500 of which amount had already been paid by Petitioner.

On March 10th, Petitioner had filed notice of appeal, against certain terms of the order confirming the sale of the partnership business to Petitioner; and so that the District Court no longer had any jurisdiction over the subject matter.

But nevertheless, on Petitioner's refusal to meet the aforesaid illegal demands as to the balance payable on the property; the Receiver had the District Court, on March 22nd, issue an order for resale, which held Petitioner in default, and ordered the return of the $10,000 deposit to Petitioner; and which also ordered the assets purchased by Petitioner, to be resold at Petitioner's risk and cost.

The Second Attempted Sale to Respondent.

A second attempt was made to sell the business to Respondent, at the supposed resale; and which said resale was held on May 1st, 1944. For apparently it was supposed that Petitioner had been intimidated, and would not dare bid at the supposed resale; and so that the business could then be resold to Respondent, and apparently at a $40,000 loss to Petitioner.

At the said resale, however, Petitioner again outbid Respondent. The Receiver then stopped the sale, took the bids and deposits of both partners; and then merely reported to the Court, the said bids of $235,000 by Petitioner, and of $220,000 by Respondent.

That report was made to the Court on May 16th. On May 24th, the Court—Mr. Justice Goldsborough, entered an order which rejected both bids, and ordered the return of the deposits to both partners. No further attempt was then made to make a public sale of the business to Respondent.

Instead, Mr. Justice Goldsborough, in that said order of May 24th, then further outlined a scheme whereby the business could be sold to Respondent without interference by Petitioner; though in total violation of the mandatory provisions of Sections 847 and 849, Title 28, U. S. C. which govern Judicial sales of any interest in land, by a Federal Court.

The Third Attempted Sale to Respondent.

In accordance with this third scheme for the sale of the business to Respondent; Mr. Justice Goldsborough entered an order on May 24th, 1944, for the sale of the property; but which said order did not conform in any way to the statutory requirements, aforesaid.

That is, Sec. 847 provides two ways for the sale of any interest in land. One is a public sale, after four weeks advertising, and the sale must be made on the premises, or at the Court house, as directed by Court order.

The second method is by a private sale. But this can

be ordered only after a hearing as to the necessity for such private sale; and after the parties have been given notice of such hearing in a manner directed by the Court. The property must be appraised, and cannot be then sold at less than 2/3rds the appraised value. The terms of the sale must be advertised for ten days before final confirmation; and the sale cannot then be confirmed, if a 10% higher offer is made for the property. .....

It appears however, that the said general provision of Sec. 847, which permits a private sale of real estate; is overruled by a later and more specific provision of that said section; which provides that if the property is in the hands of a Federal receiver—at the time it is offered for sale—it must be sold at public sale.

It thus appears that since the property, was in the hands of a receiver, it could only be sold at public sale, after four weeks advertising; and on the premises, or at the Court house, as directed by Court order.

As will presently appear, the supposed later sale to Respondent, under the Court order of May 24th, is thus wholly illegal and void, for violation of statutory provisions, governing the sale of real estate by a Federal Court.

Illegal Provisions of the Order of May 24th.

Under the terms of the Court Order of May 24th, 1944, (R. 466); Petitioner was given the right to purchase the assets for $240,500, provided Petitioner completed the purchase within 30 days. No one however was authorized to sell the property to Petitioner.

It was further provided that if Petitioner failed to complete the purchase within 30 days; that then Plaintiff should have the right to purchase the assets for $240,000; provided, that within five days after receiving notice that Petitioner had failed to complete the purchase; that Plaintiff then deposited $10,000 with the receiver and notified the receiver of his election to purchase the property; and that full settlement in accordance with the terms of sale should be made

within 30 days from the date of Plaintiff's election to purchase.

It was further provided that the terms of sale as to either party should be as follows: Sale to be as of May 1, 1944, and all adjustments to be figured to that date. And in final settlement, the purchaser should be entitled to use and apply toward the payment of the purchase price, such amount as the Receiver may fairly estimate to be his distributive interest in and to the partnership assets.

The Receiver was further authorized to account to the purchaser for the proceeds of said business between May 1st, and the date of final consummation of sale, less the expenses of the conduct during such interim.

Petitioner's Refusal to Purchase Under That Illegal Order.

Petitioner at that time had a valid appeal pending, though later denied by the Court of Appeals—against the order for resale, which had held Petitioner in default, and ordered the resale of the property at Petitioner's risk and cost. Also, Petitioner asked, under that appeal that the business be ordered turned over to Petitioner, under the terms of the original sale to Petitioner, as of Feb. 1, 1944.

The Court thus had no jurisdiction to enter its order of May 24th. Furthermore, no one was authorized by that order to sell the property to Petitioner; and also, the assets to be resold, could not be identified.

Petitioner therefore refused to attempt to purchase under that illegal order of May 24th; and as had been planned of course, from the inception of that order.

The "Sale to Plaintiff" by the Receiver.

On June 24th, the Receiver notified Plaintiff that Petitioner had failed to complete the purchase within the 30 days allowed.

Plaintiff filed notice of his election to purchase, and made a $10,000 deposit, as required by the order. Plaintiff did not however complete the purchase of the business in 30 days, as required by that said order.

Instead, on Aug. 30, 1944, the receiver had an Order Nisi entered by the Court; in which the acceptance of Plaintiff's offer, by the Receiver, was affirmed. The Order Nisi further specified, that unless cause to the contrary were shown by Oct. 9th, 1944; the sale to Plaintiff would be finally ratified and confirmed.

Confirmation of Sale to Plaintiff.

The sale to Plaintiff was then confirmed and ratified by the District Court on Oct. 9th, 1944. That order of confirmation by the District Court was then affirmed on appeal by the Court of Appeals on May 21, 1944; and on the ground that no error was found in the record.

Petitioner's appeal from the Order for Resale, which was entered aginst this Petitioner, on March 22nd, 1944, was dismissed by the Court of Appeals as having been taken from a non-appealable order.

Illegality of the Supposed Sale to Respondent.

It will be noted that the said supposed sale to Respondent, is wholly illegal and void; for violation of the mandatory provisions of Secs. 847 and 849, Title 28, U. S. C.

That is, the said supposed sale to Plaintiff was not a valid public sale, because the property was not sold at public auction; nor on the premises, or at the Court House, as directed by Court order; nor after four weeks advertising as required by Section 849.

And the said supposed sale to Plaintiff was not a valid private sale; becuase no hearing was ever held as to the necessity for any such private sale; no notice was ever given by Order of the Court, of the holding of any such hearing; and the terms of such sale were never advertised. Instead it was merely advertised that the terms of sale were all cash, subject to the terms of the Court Order of May 24th; and that is not an advertising of the terms of sale.

Further, any private sale of the said property would be

invalid because the property was in the hands of a Federal Receiver when it was offered for sale.

Also, the assets supposedly sold to Plaintiff cannot be identified, and so the said sale cannot be carried out.

The Established Criminality of the Illegal Sale to Respondent.

It will be noted that any question as to the criminal character of the carefully framed sale to Respondent in this case; has seemingly been eliminated by the charges made by the Judiciary Committee of the House, as to the impeachable misconduct of Judge Johnson. For Judge Johnson is there charged:

> "With participation in conspiracies to dispose of receivership assets to pre-arranged buyers for whom favorable purchase conditions were created by rulings from the bench."

In Petitioner's complaint to the Judiciary Committee, of the House of Representatives, it will be pointed out that that charge, as made by the Committee against Judge Johnson, is completely and fully applicable to the obvious conspiracy between Mr. Justice Goldsborough, and the Receiver, and Respondent, and Counsel for Respondent, in this case.

And in Petitioner's opinion, it is equally evident that the conspiracy between Mr. Justice Goldsborough, and the Receiver, and Counsel for Respondent, is as subject to prosecution as is that charged against Judge Johnson, in the Pennsylvania case.

The Further Criminal Character of the Supposed Sale to Respondent.

It is further to be noted, that the sale to Respondent, which has thus been pushed through with such complicated manoeuvering, is not only illegal and void, for violation of statutory provisions; but also, under the established principles of law which govern the fiduciary obligations of part-

ners, any such sale to Respondent would be a mere futility; for it would have to be set aside as fraudulent per se, on the demand of this Petitioner.

And this is true, because Plaintiff is debarred from any such purchase, without consent of Petitioner, because Plaintiff stands in a double fiduciary relation to the partnership; and in that he is both a partner, and also, he has been manager under the Receiver, for nearly 13 years past. And in both capacities, he is forbidden to deal with the partnership property for his own benefit.

The Possible Conspiracy to Frame a False Estoppel Against Pettioner.

It is obvious that the complicated conspiracy in this case was not carried through, with any idea that the sale to Respondent could be nullified by any mere demand of the Petitioner.

At the very least therefore, it can be judged that a further criminal conspiracy has been planned to set up a false estoppel against Petitioner; and under color of which, a corrupt Court would hold that Petitioner had given his consent to such a purchase by Respondent.

Two attempts at setting up such a false estoppel have already been made by Counsel for Respondent.

That is, it appears that it is proposed to claim, that where Respondents had the partnership business put up for sale; and in such fashion that Petitioner was compelled to bid at such sale—in order to protect Petitioner's interest in the property—that thereby, Respondent also was given a right to become the purchaser of the property; and that Petitioner is then estopped to deny that alleged right to Respondent.

It is well settled however, as set out in authorities cited in the record (R. 856-858) that no estoppel arises against a party from any action that he is compelled to take to protect his own interests; and such for example, as bidding at a judicial sale under an order from which the said party has appealed.

The Second Attempt to Set Up a False Estoppel.

As a second, and further attempt to set up a false estoppel against Petitioner; Counsel for Respondent makes the false claim that Petitioner had himself suggested that the property be sold at public autcion, and that both partners should be permitted to bid thereon. Counsel misrepresents certain statements made at a Court hearing before Mr. Justice Bailey, in support of that false claim. (R. 245).

The facts were that Petitioner claimed that by reason of the purchase of the firm's building, on a 14 year contract; that thereby the partnership became a partnership for a 14 year term (R. 567).

Petitioner claimed further that Respondent had wrongfully broken that agreement, (R. 567) and that therfeore, Petitioner—as the non-wrongdoing partner—should have the right to take over the business, in accordance with the provisions of the Uniform Partnership Act; even though that act had not been enacted in the District, and even though no Federal Court had ever passed on that point.

But that right, so claimed by Pettioner, was not available to Respondent; because he denied that the partnership was a partnership for a 14 year term. Furthermore, even had that right been recognized by the District Court; it would have lapsed, in 1938, at the end of the 14 year term, in any case.

It was thus not true, that Petitioner had urged that both partners should have the right to bid on the property; but merely that the District Courts should adopt the said provision of the Uniform Partnership Act, and permit Petitioner to take over the business as the non-wrongdoing partner. But that right would have expired in 1938, in any case.

The $500,000 Price on Petitioner's Life.

It will be noted, that the District Court, and Respondent, and Counsel for Respondent, and the Receiver, have expended enormous effort in carrying through a sale to Re-

spondent; and which sale the law stamps as fraudulent per se. As such, under established principles of law, that sale to Respondent is—supposedly—a mere futility; for—legally—it must be set aside on the mere demand of this Petitioner.

It is also to be noted that the bulk of the Court records in the case have been either criminally concealed, or criminally stolen or destroyed. And this destruction too should seemingly be not much better than a futility; for both Petitioner and Respondent, have copies of the missing files; and Petitioner can force the replacement of copies in the Court files, in lieu of the missing papers; and as Petitioner did in fact do in respect to one missing paper, (R. 231, R. 924).

It is also to be noted that the decision of the Court of Appeals in this case, has placed what amounts practically to a $500,000 price on Petitioner's life. For, if Petitioner should suddenly die, accidentally or otherwise; Plaintiff would then take over the $500,000 partnership property without opposition; and Petitioner's relatively small equity in the partnership, could then be wiped out by a mere order of the District Court, assessing high receivership costs against this Petitioner. All that thus stands between Respondent and possession of a $500,000 business, that is earning over $100,000 a year, is the life of this Petitioner.

The More Sinister Explanation of the Seemingly Futile Sale to Respondent, and for the Destruction of the Court Records.

It is Petitioner's opinion that Counsel for Respondent, in forcing through that seemingly futile sale to Respondent, has placed no real reliance on the setting up of false estoppels against this Petitioner.

Instead, in Petitioner's opinion, there is ample evidence to show that the plan has been to prevent any action by Petitioner—toward the setting aside of the sale to

Respondent—by the attempted assassination of this Petitioner.

Numerous attempts have thus been made to assassinate Petitioner through poisoning. And, in Petitioner's opinion, there is a fair chance that sufficient legal evidence may be obtainable, to permit of prosecution for conspiracy to murder. And this is one of Petitioner's purposes, in asking for the appointment of a special prosecutor.

The Impending Scandal in the Case.

It is Petitioner's opinion that this case now represents an all but complete breakdown of the judicial machinery in the District of Columbia. It is further Petitioner's opinion that this case must inevitably break, almost immediately, into the worst scandal that has ever affected any part of the American Government.

It is further Petitioner's opinion that the Judiciary Committee of the House of Representatives, will hold that the obviously fraudulent framing, of the fictitious sale in favor of Respondent, in this case; is even more flagrant than in the Johnson case in Pennsylvania; and that impeachment proceedings are called for, even more imperatively in the present case.

It is further Petitioner's opinion that certain of Petitioner's discoveries in physics; and one group of Petitioner's shipping inventions, are now of immense importance to the National defense program; and to the proper evaluation and further testing of the atomic bomb; and more particularly, as to the determination of the question, as to the future size and character of the American Navy.

It is Petitioner's opinion, for these and other reasons, that Petitioner will have little difficulty in having a Uniform Partnership Act passed for the District; and that therefore, the sale to Respondent, even though it should be carried through, would then have to be set aside under provisions of that act.

The Petition to the Judiciary Committee of the House of Representatives will be filed probably within the next week. It is Petitioner's opinion that this Court should have available the more complete statement of facts, as will be set out in that said petition; before passing finally on Petitioner's Motion for Rehearing in this cause.

Petitioner therefore prays that this further minor delay be granted, in the final consideration of Petitioner's pending motion for rehearing, as to the denial of writs of certiorari in this cause.

Respectfully submitted,

EDWIN J. CREEL.